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ABSTRACT

This Wisconsin Legislative Council information memorandum describes 1987 Wisconsin Act 285, relating to truancy and dispositional alternatives for children adjudged delinquent or in need of protection or services based on habitual truancy. Part I of the memorandum lists eight highlights of Act 285. Part II describes statutes not affected by Act 285 and contains discussions of the compulsory school attendance requirement, truancy and school attendance enforcement, required school activities, and juvenile court dispositions. Part III describes the eight provisions of Act 285: (1) the definition of a habitual truant; (2) the truancy plan; (3) school truancy procedures; (4) municipal ordinances prohibiting truancy and municipal court jurisdiction; (5) juvenile court proceedings; (6) court-ordered educational services; (7) penalties; and (8) county ordinances creating forfeitures. (NB)

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REVISIONS IN LAWS RELATING TO TRUANCY AND DISPOSITIONAL ALTERNATIVES FOR DELINQUENT OR TRUANT CHILDREN

(1987 WISCONSIN ACT 285)

CG 020926

INFORMATION MEMORANDUM 88-1

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Information Memorandum 88-1

REVISIONS IN LAWS RELATING TO TRUANCY AND DISPOSITIONAL ALTERNATIVES FOR DELINQUENT OR TRUANT CHILDREN (1987 WISCONSIN ACT 285)

INTRODUCTION

This Information Memorandum describes 1987 Wisconsin Act 285, relating to truancy and dispositional alternatives for children adjudged delinquent or in need of protection or services based on habitual truancy. The Act took effect on April 26, 1988 and will first apply to a child's truancy from school which occurs on or after July 1, 1988.

Copies of Act 285 may be obtained from the Documents Room, Basement Rotunda, State Capitol, Madison, Wisconsin 53702; telephone (608) 266-2400.

The Memorandum is divided into the following parts:

Page

PART I - HIGHLIGHTS OF ACT 285 3

PART II - DESCRIPTION OF STATUTES NOT AFFECTED BY ACT 285 5

A. Compulsory School Attendance Requirement 5
B. Truancy; School Attendance Enforcement 6
C. Required School Activities 6
D. Juvenile Court Dispositions 7

PART III - DESCRIPTION OF PROVISIONS OF ACT 285 11

A. Definition of "Habitual Truant" 11
B. Truancy Plan 11
C. School Truancy Procedures 13
D. Municipal Ordinances Prohibiting Truancy; Municipal Court Jurisdiction 13
E. Juvenile Court Proceedings 14
F. Court-Ordered Educational Services 15
G. Penalties 16
H. County Ordinances Creating Forfeitures 17

PART I

HIGHLIGHTS OF ACT 285

1987 Wisconsin Act 285 includes the following provisions:

1. Creates a definition of "habitual truant" for the purposes of juvenile court jurisdiction and the laws relating to truancy enforcement.

2. Requires all public school boards to develop a truancy plan, using local planning committees, for responding to the problems of truant children.

3. Modifies present procedures for notifying parents of truant children if the children are "habitually truant."

4. Allows counties, cities, villages and towns to enact ordinances prohibiting "habitual truancy" and gives municipal courts concurrent jurisdiction with juvenile courts over habitual truants.

5. Creates new dispositional alternatives that may be used by juvenile courts and municipal courts, for children found to be in need of protection or services based on habitual truancy.

6. Creates new court-ordered educational programs as dispositional alternatives for children adjudged delinquent or in need of protection or services based on habitual truancy.

7. Creates a new crime of "contributing to the truancy of a child." Also, changes current penalties for a person who has a child between the ages of six and 18 under his or her control and fails to cause the child to attend school regularly.

8. Authorizes counties to enact and enforce ordinances which prohibit contributing to the truancy of a child and failing to cause a child between the ages of six and 18, who is under the person's control, to attend school regularly. Also, authorizes forfeitures for violations of each of these ordinances.

PART II

DESCRIPTION OF STATUTES NOT AFFECTED BY ACT 285

This Part of the Memorandum describes provisions of the statutes related to truancy and dispositions for children adjudged delinquent or in need of protection or services which were in effect prior to the enactment of Act 285 and, in general, were not changed by the Act. Most of the provisions of Act 285 expanded prior law by adding new provisions to the existing statutes, rather than changing existing provisions. The limited changes that were made by the Act in the provisions of the existing statutes are specifically noted in the description in this Part.

The purpose of this Part is to provide a context to assist in understanding Act 285. Part III of this Memorandum describes all of the provisions of the Act in detail.

A. COMPULSORY SCHOOL ATTENDANCE REQUIREMENT

Generally, any person having under his or her control a child who is between the ages of six and 18 must cause the child to attend school regularly until the end of the school term, quarter or semester of the school year in which a child turns 18 years of age, unless the child has been excused or graduated from high school.

A person who has a child between the ages of six and 18 under his or her control and fails to cause the child to attend school regularly may be prosecuted. Before such prosecution may be brought, however, the school attendance officer must provide evidence to the court that the activities described under C, below, have been completed.

Prior to the enactment of Act 285, the penalty for failing to cause a child to attend school regularly was a fine of not more than $50 or imprisonment for not more than three months, or both. As described in Part III, G, below, Act 285 changes this penalty to a fine of not more than $500 or imprisonment for not more than 30 days, or both. Under both prior law and Act 285, these penalties may not be applied to any person who proves an inability to comply with the law because of the child's disobedience. In such a case, the child must be referred to juvenile court. The juvenile court may adjudge the child to be in need of protection and services on the basis of habitual truancy [s. 118.15 (1) (a) and (5), Stats.].

B. TRUANCY; SCHOOL ATTENDANCE ENFORCEMENT

The statutes define "truancy" to mean any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of the absence by the parent or guardian of the absent pupil. "Truancy" also means intermittent attendance carried on for the purpose of defeating the compulsory attendance requirement [s. 118.16 (1) (b), Stats.].

The school attendance officer must notify the parent or guardian of a truant child by the end of the second day after receiving a report of an unexcused absence. The notice must be given by personal service, mail or a telephone call of which a written record is kept [s. 118.16 (2) (c), Stats.]. As described in Part III, C, below, Act 285 amends this provision to require that notice may be given by mail only after personal contact or a telephone call has been attempted.

Under the statutes, a juvenile court may exercise jurisdiction over a child alleged to be in need of protection or services because the child is "habitually truant" from school. However, before filing information on the child, evidence must be provided to the court by the school attendance officer that the activities described under C, below, have been completed. Prior to the enactment of Act 285, there was no definition of "habitually truant"; Act 285 creates such a definition [ss. 48.13 (6) and 118.16 (5), Stats.].

C. REQUIRED SCHOOL ACTIVITIES

The statutes provide that, before a juvenile court proceeding may be brought against a child for habitual truancy or against the child's parent or guardian for failing to cause a child to attend school regularly, the school attendance officer must provide evidence to the court that appropriate school personnel have, within the school year during which a truancy occurred:

1. Met with, or attempted to meet with, the child's parent or guardian to discuss the child's truancy.

2. Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and considered curriculum modifications.

3. Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, taken steps to overcome the learning problems.

4. Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, taken appropriate action or made appropriate referrals [ss. 48.13 (6) and 118.16 (5), Stats.].

D. JUVENILE COURT DISPOSITIONS

1. Child Adjudged Delinquent

Under the statutes, if a juvenile court finds that a child is delinquent, it may order any of the following dispositions:

a. Counsel the child or the child's parent, guardian or legal custodian.

b. Place the child under the supervision of the Department of Health and Social Services (DHSS), a county department, a child welfare agency or a suitable adult.

c. Place the child in his or her home under supervision of the DHSS, a county department or a licensed child welfare agency and order the agency to provide specified services to the child and the child's family.

d. Designate one of the following as the placement for the child:

(1) The home of a relative of the child.

(2) A home which need not be licensed if placement is for less than 30 days.

(3) A licensed foster home or group home.

(4) A licensed residential treatment center.

e. If it is shown that the rehabilitation, treatment or care of the child cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to a relative of the child, a county department or a licensed child welfare agency.

f. Transfer legal custody of the child to the division of the DHSS administering corrections for placement in a secured correctional facility if:

(1) The child has been found to be delinquent for the commission of an act which, if committed by an adult, would be punishable by a sentence of six months or more; and

(2) The child has been found to be a danger to the public and to be in need of restrictive custodial treatment.

g. If the child has committed one of a number of specified computer crimes, place restrictions on the child's use of computers.

h. If the child has committed a delinquent act which has resulted in damage to the property of another or actual physical injury to another excluding pain and suffering, order the child to repair the damage or make reasonable restitution.

i. If the child is in need of special treatment or care, order the child's parent, guardian or legal custodian to provide such care.

j. Restrict, suspend or revoke the child's driving privileges if the child is adjudicated delinquent under a violation of any law in which a motor vehicle is involved.

k. If the judge finds that no other court services or alternative services are needed or appropriate, impose a forfeiture not to exceed $50.

l. Order the child to participate in a supervised work program.

m. Order that a child 17 years of age or older may live independently.

n. If a treaty is in effect between the United States and a foreign country which so allows, transfer the child to the foreign country [s. 48.34, Stats.].

2. Child Found in Need of Protection or Services

Prior to the enactment of Act 285, if the juvenile court found that a child was in need of protection or services, it could order any of the dispositions described above for a delinquent child, except that the court could not:

a. Transfer the child to the division of the DHSS administering corrections.

b. Order restitution.

c. Order payment of a forfeiture.

d. Restrict, suspend or revoke the child's driving privileges.

e. Place any child not specifically found to be developmentally disabled, mentally ill or to have exceptional educational needs in facilities which exclusively treat those categories of children.

f. Order the child to participate in a supervised work program [s. 48.345, Stats.].

Act 285 makes the dispositions under d and f, above, available for children found in need of protection or services based on habitual truancy, as described in Part III, E, of this Memorandum. The Act does not change these limitations on dispositions for children found to be in need of protection or services on other bases.

PART III

DESCRIPTION OF PROVISIONS OF ACT 285

This Part of the Memorandum describes the provisions of Act 285. For a description of provisions of the statutes related to truancy and juvenile court dispositional alternatives which are not changed by the Act, see Part II of this Memorandum.

A. DEFINITION OF "HABITUAL TRUANT"

Act 285 creates a single definition of "habitual truant" to be used both for the purposes of juvenile court jurisdiction, under ch. 48, Stats. (the Children's Code), and the laws relating to truancy enforcement by schools, under s. 118.16, Stats. This definition also applies to municipal truancy ordinances described under D, below.

Under the Act, "habitual truant" means a pupil who is absent from school without an acceptable excuse for either:

1. Part or all of five or more days out of 10 consecutive days on which school is held during a school semester; or

2. Part or all of 10 or more days on which school is held during a school semester.

B. TRUANCY PLAN

Act 285 requires each school board to adopt a truancy plan not later than September 1, 1989. A truancy planning committee must be established in each county to make recommendations to the school boards of all of the school districts in the county on the items which must be included in the school districts' truancy plans. The committee shall be convened by the superintendent of the school district which contains the county seat and must make its recommendations to the school districts not later than February 1, 1989.

The Act requires the truancy planning committee to include representatives of:

1. Each school district in the county;

2. The district attorney's office;

3. The sheriff's department;

4. The local law enforcement agency, other than the sheriff's department, with jurisdiction over the county seat;

5. The juvenile court intake unit;

6. The circuit court; and

7. The county human services agency (or the social services and mental health or developmental disabilities agencies, as appropriate).

The committee may determine to include other members and shall consult with other public and private social services, educational and other agencies and the business community, as appropriate.

The Act provides that each school board's truancy plan shall include:

1. Procedures for notifying parents or guardians of absences of habitual truants and meeting and conferring with such persons.

2. Plans and procedures for identifying truant children of all ages and returning them to school.

3. Methods to increase and maintain public awareness of and involvement in responding to truancy.

4. The immediate response to be made by school personnel when a truant child is returned to school.

5. The types of truancy cases to be referred to the district attorney and the time periods within which the district attorney will respond and take action.

6. Plans and procedures to coordinate the responses to the problems of habitual truants with public and private social services agencies.

7. Methods to involve the truant child's parent or guardian in dealing with and solving the child's truancy problem.

Each truancy planning committee and school board also is required to identify factors which contribute to truancy in the county or school district. Each committee and school board also is directed to identify state statutes, municipal ordinances or school or social services policies that contribute to or inhibit the response to truancy and make recommendations for legislation or school or social services policies that will assist in dealing with truancy.

C. SCHOOL TRUANCY PROCEDURES

Act 285 modifies current procedures for notifying parents of truant children. Under the Act, except as described below for habitual truants, notice may be given by mail only after personal contact or a telephone call has been attempted.

Under the Act, the requirement that the school attendance officer notify the parent or guardian of a child's truancy, for each day the child is truant, by the end of the second day after receiving a report of an unexcused absence, and the requirement that notice be given by personal contact, mail or telephone call, do not apply to habitual truants. Instead, when a child first becomes a "habitual truant," as defined under the Act, notice must be given by certified or registered mail and shall include the following information:

1. A statement of the parent's or guardian's responsibility to cause the child to attend school regularly.

2. A statement that the parent, guardian or child may request program or curriculum modifications for the child and that the child may be eligible for enrollment in a program for children at risk.

3. A request that the parent meet with appropriate school personnel to discuss the child's truancy.

4. A statement of penalties that may be imposed on the parent or guardian for failure to cause the child to attend school regularly.

The method and frequency of subsequent notices to parents or guardians of habitual truants shall be specified in the school district's truancy plan.

D. MUNICIPAL ORDINANCES PROHIBITING TRUANCY; MUNICIPAL COURT JURISDICTION

Act 285 authorizes counties, cities, villages or towns to enact ordinances prohibiting a child from being a "habitual truant." Municipal courts also are granted concurrent jurisdiction with juvenile courts in proceedings against a child for a violation of a municipal truancy ordinance.

Under the Act, the ordinance shall provide which of the following dispositions are available to the municipal or juvenile court for violation of the ordinance:

1. Suspension of the child's operating privilege for not less than 30 nor more than 90 days.

2. An order for the child to participate in counseling, community service or a supervised work program.

3. An order for the child to remain at home, except during hours in which the child is attending religious worship or a school program (home detention).

4. An order for the child to attend an educational program described under F, below.

Before either a juvenile court or a municipal court may exercise jurisdiction over a child alleged to have violated a municipal truancy ordinance, the Act provides that evidence must be provided by the school attendance officer that the activities under s. 118.16 (5), Stats., have been completed. These are the same activities that must be completed before a juvenile court may exercise jurisdiction over a child alleged to be in need of protection or services based on habitual truancy. [See Part II, C, above].

E. JUVENILE COURT PROCEEDINGS

Under the Children's Code, the time period for supervision, under a consent decree, for a child alleged to be in need of protection or services is six months. Also, there is a six-month limitation on informal dispositions. Act 285 extends these time periods to one year for children alleged to be habitually truant.

Act 285 also expands the dispositional alternatives available if a judge finds: (1) that a child is in need of protection or services based on habitual truancy; and (2) that the habitual truancy is a result of the child's intentional refusal to attend school, rather than the failure of any person having control of the child to cause the child to attend school regularly.

The new dispositional alternatives are:

1. Suspension of the child's operating privilege for not less than 30 nor more than 90 days.

2. An order for the child to participate in counseling, community service or a supervised work program.

3. An order for the child to remain at home, except during hours in which the child is attending religious worship or a school program (home detention).

4. An order for the child to attend a program for children at risk made available by his or her school district.

5. An order for a child to attend one of the educational programs described under F, below.

F. COURT-ORDERED EDUCATIONAL SERVICES

Act 285 includes new educational services alternatives under the dispositional alternatives available for a child who is adjudged: (1) delinquent (i.e., found to have violated a state or federal criminal law); or (2) in need of protection or services based on habitual truancy. These new alternatives may not be used if the child has exceptional educational needs.

Under these provisions, a judge may order a child to attend any of the following:

1. A nonresidential educational program, including a program for children at risk, provided by the school district in which the child resides.

2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 U.S.C. s. 2000d, relating to prohibiting discrimination.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a vocational, technical and adult education (VTAE) district located in the school district in which the child resides.

The Act provides that the judge shall order the school board to disclose the child's pupil records to the agency responsible for supervising the child, to the extent necessary to determine the child's compliance with the order. In addition, the Act directs the judge to order the county department or licensed child welfare agency responsible

for supervising the child to disclose to the educational agency which is providing an educational program under 1 to 4, above, any records or information about the child as necessary to assure the provision of appropriate educational services.

The Act also directs school boards to coordinate and provide for continuity of educational programming for pupils receiving educational services as the result of the court order. School boards must provide a written report to the court and to the agency which is required, by the court, to submit an educational plan for the child. The report must describe the child's educational status and make recommendations regarding educational programming for the child. The report must be provided to the court and the agency at least three days before the date of the child's dispositional hearing.

The Act provides that, if a pupil is receiving educational services under a court order, then the school board of the school district in which the pupil resides at the time of issuance of the order shall pay tuition for the pupil and may count the pupil as 1.0 pupil in its membership for general aid. For each full-time equivalent pupil from the school district served by the agency, the tuition paid by the school district shall be an amount equal to at least 80% of the average per pupil cost for the school district. Under the Act, no state VTAE aid may be paid to a VTAE district for pupils attending a VTAE school under a court order.

G. PENALTIES

Act 285 creates a new crime of contributing to the truancy of a child. The crime is a Class C misdemeanor which is punishable by a fine of $500 or 30 days imprisonment, or both.

The Act changes the penalties for a person who has a child between the ages of six and 18 under his or her control and fails to cause the child to attend school regularly. The penalty is changed from a fine of not more than $50 or imprisonment for not more than three months, or both, to a fine of not more than $500 or imprisonment for not more than 30 days, or both. The revised penalty is the same as that provided for the new crime of contributing to the truancy of a child. The Act also provides that a person is not subject to this penalty if he or she has been found guilty of the new crime of contributing to the truancy of a child.

The Act provides that neither of the penalties just described apply to a person who has under his or her control a child who has been sanctioned under s. 49.50 (7) (h), Stats. Section 49.50 (7) (h), Stats., created by 1987 Wisconsin Act 27, requires recipients of Aid to Families

with Dependent Children who are between the ages of 13 and 19 years to attend school.

H. COUNTY ORDINANCES CREATING FORFEITURES

Act 285 authorizes counties to enact and enforce ordinances prohibiting and providing forfeitures for the following conduct:

1. Contributing to the truancy of a child; and

2. Failing to cause a child between the ages of six and 18 who is under the person's control to attend school regularly.

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